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J. Peter Bragg

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UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	MM DOCKET No.: 99-153
)	
READING BROADCASTING, INC.)	File No.: BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS CORP.)	File No.: BPCT-940630KG
)	
For Construction Permit for)	
a New Television Station to)	
Operate on Channel 51,)	
Reading Pennsylvania)	

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Operate on Channel 51,)
Reading, Pennsylvania)

Room TWA-363
445 - 12th Street, S.W.
Washington, D.C. 20554

Tuesday,
July 13th, 1999

The parties met, pursuant to the notice of the
Judge, at 9:33 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL,
Administrative Law Judge

APPEARANCES:

On behalf of Adams Communications Corp.:

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On Behalf of Federal Communications Commission:

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I N D E X

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2 Status Conference

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11 Hearing Began: 9:33 a.m. Hearing Ended: 10:21 a.m.

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P R O C E E D I N G S

(9:33 a.m.)

JUDGE SIPPEL: Good morning. Please be seated. I guess welcome back to the land of concurrent hearings. This is a situation which is, I guess -- I would say -- is novelly unique based on my reading of the first report and order by the Commission with respect to how this type of a comparatively new case is to be handled.

I have got some preliminary thoughts, and I would like to cover what I have, but before I do that, I would like to get the appearance of counsel, starting first with Reading Broadcasting.

MR. HUTTON: Thomas Hutton, of Holland and Knight. I would like to note for the record that I was just retained late yesterday afternoon for the limited purpose of representing Reading Broadcasting at this prehearing conference, and I have not entered a written notice of appearance, nor would I intend to unless you require it, because my engagement is so limited.

Reading Broadcasting's permanent counsel is up in the air at this point.

JUDGE SIPPEL: In other words, they haven't decided on who they are going to retain. Is that the sum and substance of it?

MR. HUTTON: That's correct.

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1 JUDGE SIPPEL: Well, that is a little
2 disappointing to hear, because I am going to set some dates
3 today, and I am not too much -- I am not concerned about the
4 fact that you don't have a technically filed notice of
5 appearance. The renewal applicant has done that, and there
6 is actually on file a notice of appearance by the principal,
7 and also I have got some indication of the hearing fees in
8 the. So -- I mean, you are in the door.

9 MR. HUTTON: I understand.

10 JUDGE SIPPEL: But as I said, I was expecting to
11 have people here prepared to go forward on the litigation,
12 because I do have -- there is a lot of work that has to be
13 done, and there are a lot of schedules that have to be set,
14 and I am sure that you will relay that to your client, that
15 what we do here today, it is to be bound by it, or that they
16 are bound by it.

17 MR. HUTTON: They understand that.

18 JUDGE SIPPEL: All right. And on behalf of Adams
19 Communications?

20 MR. COLE: Gene Bechtel and Harry Cole, of Bechtel
21 and Cole.

22 JUDGE SIPPEL: All right. Mr. Bechtel and Mr.
23 Cole. And on behalf of the Mass Media Bureau?

24 MR. SHOOK: James Shook.

25 JUDGE SIPPEL: Good morning, Mr. Shook.

1 MR. SHOOK: Good morning, Your Honor.

2

3 JUDGE SIPPEL: Okay. I know that we do have some
4 attendees -- interns from the Commission, and a law student
5 from outside, and that is who is sitting in the back of the
6 room. The conference was initially scheduled for June 15th,
7 and at the request of counsel for both parties -- there were
8 individual requests -- there were some continuances granted,
9 without objection from the Mass Media Bureau, and so that's
10 why we are meeting today, on the 13th of July.

11 The burdens of proceeding in the -- with the evidence
12 and the proof that are going to be assigned by statute to
13 the competing parties, and that makes Reading Broadcasting,
14 gives Reading Broadcasting, which is the first party on the
15 caption of the case, the burden of going forward with the
16 proof, and being prepared to go forward on the first day of
17 the hearing and completing its case first.

18 And based again on my reading of that first report
19 and order, the Commission wants to have the evidence on the
20 renewal expectancy, and on the standing comparative issues,
21 done at the same time.

22 So all of that evidence will come in, and any
23 negative evidence from Adams Communications will be
24 received, and there will be a decision on the entire case,
25 of course with the Bureau's participation.

1 I am ready to set procedural dates, and I have a
2 hearing date in mind of October the 12th. I have also
3 issued a prehearing order in this case, 99-M-33, which
4 outlines some points that I wanted to cover today.

5 I don't think we have to go into too much depth
6 with them, but I just want a general feel and understanding
7 for the scope of the evidence that I might have to contend
8 with, as well as the amount of discovery that is going to be
9 required, which of course impacts on the dates which are
10 set.

11 But I really do want to use that October 12th
12 date. I think that is a reasonable period of time. There
13 are no character issues, and there are no disqualifying
14 issues in the case.

15 It is a straightforward, standard of comparative
16 issue, sans integration, and this is how the Commission, as
17 I read the first report and order, wants these cases
18 handled. They want it done as close to the comparative
19 standards that were in effect prior to Bechtel II.

20 And as I said up front that eliminates
21 integration, and we go from there. I believe that is my
22 rerun. Now, having said that -- and those are my own
23 remarks -- I do want to say -- let me go back to that first
24 report and order, and here is what I find the Commission to
25 have instructed.

1 They have said that renewal applicants and
2 challenges are permitted within the confines of a generally
3 phrased standard of comparative issue, to present the
4 factors in evidence that they believe are most appropriate.

5 And that the case is to be decided as nearly as
6 possible on the standards in effect prior to Bechtel II.
7 Again, of course, there would be no evidence offered on
8 integration of ownership.

9 In addition to those factors, settlement can be
10 accomplished without any limit on payments, although there
11 must be assurance from the circumstances that the
12 application of the challenge is not speculative or filed to
13 extract a payment.

14 So as I read that, with the exception of
15 integration, we are back to square one, where comparative
16 hearings, comparative renewal hearings, have always been.
17 Now, that's my statement. I will receive comments or
18 statements from counsel with respect to these issues or
19 these questions, insofar as they may impact on the evidence
20 and the scope of the case.

21 And then I will set -- I do have specific
22 procedural dates to set, but I would like to hear from
23 counsel first. Mr. Hutton, in light of your limited
24 involvement in the case, I don't know if -- well, do you
25 want to advance anything on this at this point?

1 MR. HUTTON: Yes, I do, Your Honor.

2 JUDGE SIPPEL: Please do then.

3 MR. HUTTON: It is my view that in light of the
4 Bechtel decision, the terms of engagement are somewhat
5 broader than you just outlined. I would suggest that you
6 allow the parties to brief the matter of exactly what sort
7 of evidence should be heard in the case given the relatively
8 unknown framework in which we are operating.

9 JUDGE SIPPEL: And when would you -- you mean I
10 would set up a briefing schedule?

11 MR. HUTTON: Yes.

12 JUDGE SIPPEL: With just two rounds, an
13 affirmative and a response?

14 MR. HUTTON: Yes, sir.

15 JUDGE SIPPEL: You are nodding, Mr. Cole? Do you
16 think that is a good idea?

17 MR. COLE: Your Honor, yes, I was nodding. Mr.
18 Bechtel is speaking for the Adams people, but yes.

19 JUDGE SIPPEL: I'm sorry. Mr. Bechtel, what do
20 you think of that proposal?

21 MR. BECHTEL: I am in agreement with that, too.

22 JUDGE SIPPEL: Okay. Mr. Shook?

23 MR. SHOOK: We have no objection to that. We
24 think that it would be helpful from the Bureau's
25 perspective. I would request that we would limit our

1 comments to responses, rather than be part of the first
2 group.

3 JUDGE SIPPEL: In the nature of a comment to that?

4 MR. SHOOK: Correct.

5 JUDGE SIPPEL: Well, I thought what I read that
6 the Commission wrote seemed to be pretty straightforward,
7 but I can only use further education on the question. There
8 is no doubt about it. I mean, this is a novel issue. I
9 mean, this has not been addressed before, and whatever you
10 do in that regard is going to help me.

11 So, I will set up a briefing schedule, and I will
12 get an order out on that this afternoon or tomorrow. But
13 why don't we set a date down for talking about doing some
14 work here. Do you think you could have that in to me by the
15 22nd?

16 MR. BECHTEL: Yes, sir.

17 JUDGE SIPPEL: And comments and opposition by the
18 27th. The 22nd is a Thursday. That is July 22nd. The 27th
19 is a Tuesday. Now, the 27th is when the Bureau would file
20 its comments with respect to the comments submitted.

21 MR. SHOOK: All right.

22 JUDGE SIPPEL: And I am going to ask -- and, of
23 course, it is a given -- and, counsel, you are used to
24 cooperating on this, but faxed or hand-delivered, and get
25 these papers to your opposition the same day that you are

1 filing them so that the full extent of time can be utilized
2 on the replies. Okay. Anything else? Mr. Hutton.

3 MR. HUTTON: Your Honor, on that, if I could have
4 at least two more days, and the reason that I ask that is
5 unfortunately the system of review that we have. We have a
6 number of people who have to pass judgment on anything that
7 we submit to you.

8 And in order for that to be done, I would like to
9 make sure that each of these individuals has at least some
10 time to consider what we are going to say. So, I would
11 request the 29th rather than the 27th as our due date.

12 JUDGE SIPPEL: Any objection to that? Mr.
13 Bechtel?

14 MR. BECHTEL: No, Your Honor.

15 MR. SHOOK: No, Your Honor.

16 JUDGE SIPPEL: Everybody gets the same benefit of
17 that. So then it is not -- the reply date is not the 27th,
18 but it is the 29th of July.

19 MR. HUTTON: Thank you, Your Honor.

20 JUDGE SIPPEL: Now, was there anything more, Mr.
21 Hutton?

22 MR. HUTTON: Not on that point.

23 JUDGE SIPPEL: On any other point? I mean, I will
24 take your positions first, and then we can go down to Mr.
25 Bechtel.

1 MR. HUTTON: I did confer yesterday afternoon with
2 Mr. Bechtel concerning the matters raised in your prehearing
3 conference order, and you had asked counsel to agree on
4 methods of cooperative discovery.

5 JUDGE SIPPEL: Yes, sir.

6 MR. HUTTON: And I think it is fair to say that we
7 have a general framework in mind of the types of discovery
8 that the parties would participate in. Mr. Bechtel and I
9 both are interested in the opportunity for limited
10 interrogatories designed to identify relevant parties and
11 witnesses.

12 And we are also interested in the ability to
13 conduct depositions, and obtain documents from each other as
14 part of the discovery process.

15 JUDGE SIPPEL: Okay. And I take it that what you
16 are telling me is that it is contemplated, upfront anyway,
17 that this would be done in an era or an aura of cooperation.
18 I mean, obviously, you will serve your discover notice and
19 your request for documents, and there is going to be an
20 effort to cooperate in this process.

21 MR. HUTTON: Well, I would expect so. We always
22 reserve the right to object to particular proposals for
23 discovery, but I am going to encourage my client to
24 cooperate.

25 JUDGE SIPPEL: I am not shocked by that. I am

1 going to proceed until I am shown otherwise, and we are
2 going to proceed on the basis that everybody is going to
3 cooperate, and that there is going to be a minimum of
4 motions practiced to get people to do the work that they are
5 supposed to do.

6 Anyway, I have said what I want to say on that,
7 and that's fine. What about stipulations? Anything about
8 stipulations? I mean, as far as a matter of practice?
9 Would your clients sit down and cooperate, and try and work
10 out stipulations?

11 I will give you an example -- the renewal
12 expectancy period. That is a critical time period.

13 MR. HUTTON: We would be willing to explore the
14 possibility of stipulating on that.

15 JUDGE SIPPEL: Generally what I do on
16 interrogatories -- and I'm glad that you mentioned the --
17 and I am assuming that all of us again -- and Mr. Bechtel
18 also, but the interrogatories are not the most efficient way
19 of getting information as a general proposition.

20 But limiting it in the way you outlined is fine
21 with me. The Bureau -- I give the Bureau an exception. The
22 Bureau can ask its interrogatories as it sees fit.

23 But if you are going to go beyond preliminary
24 information, such as identify -- the identification of
25 persons, for purposes of knowing who to depose, and who to

1 line up to interview, I would require that you would come
2 with a motion for leave to file for those if there are going
3 to be anything extensive. Anything more on that, Mr.
4 Bechtel?

5 MR. BECHTEL: No. I think the big part under the
6 renewal expectancy issue will be the document production of
7 documents relevant to the question of substantial
8 performance. That's the main thing. Interrogatories, I
9 envision, will be limited as you had suggested, and that you
10 get names of people.

11 I think depositions would be also a significant
12 part, depending upon what the documents show. There is a
13 specialized aspect of discovery in the substantial
14 performance cases, where it is relevant that you look at
15 comparable information concerning programming services by
16 other stations in the market.

17 And the traditional way to do that is to serve
18 interrogatories -- and these are interrogatories -- on the
19 other stations in the market, and we start discovery
20 immediately, and that is a very early order of business,
21 because stations in the market sometimes aren't too thrilled
22 with having these interrogatories, and that can be a
23 contentious process.

24 JUDGE SIPPEL: Are you going to be getting into
25 things like business practices, or --

1 JUDGE SIPPEL: No, sir. No, sir. It is limited
2 to the categories of programming that are relevant under the
3 substantial performance factor. And that is to say news,
4 public affairs, public service announcements, and other
5 types of program services, including local program services,
6 other than entertainment, sports, or other format kinds of
7 things.

8 JUDGE SIPPEL: Could you deal with the documents
9 that they are required to keep in their public files that
10 are available?

11 MR. BECHTEL: Exactly, and you ask them for -- you
12 give them a composite week, or a sample week, or a sample
13 time period, and ask for the nature of the programming, and
14 the quantity, and then that is a frame of reference in
15 relation to the target incumbent.

16 JUDGE SIPPEL: Well -- and it would be limited
17 only to the relevant period within that time frame?

18 MR. BECHTEL: Exactly.

19 JUDGE SIPPEL: And identified --

20 MR. BECHTEL: Exactly. And I mention that because
21 discovery is fairly complicated. By the time that you get
22 through with looking at the station and all of their
23 documents with regard to their programming in these
24 categories through the license term.

25 And then you have to deal with this survey of not

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1 totally happy respondents because of the burden, and then
2 you also have the witnesses. I think that part of the
3 discovery is the main part, and that's something that we
4 start right now.

5 JUDGE SIPPEL: Are you talking about just on the
6 T.V. stations, or --

7 MR. BECHTEL: I am talking about all of that.
8 Going after the documents of the target station, the
9 interrogatories to the other stations in the market.

10 JUDGE SIPPEL: The T.V. stations, and not FM
11 stations, or AM stations, but just T.V. stations?

12 MR. BECHTEL: T.V. stations, commercial television
13 stations.

14 JUDGE SIPPEL: Commercial television. Okay. Are
15 there that many in the market?

16 MR. BECHTEL: About 15, I believe.

17 JUDGE SIPPEL: Well, let me get -- Mr. Hutton, do
18 you want to respond to that? Have you talked about this
19 with Mr. Bechtel?

20 MR. HUTTON: I have not, Your Honor. To be honest
21 with you, I am not even sure of how you define the market,
22 or whether he is correct about the number of stations in the
23 market.

24 JUDGE SIPPEL: Well, we are talking here -- you
25 know, I am just trying to get a feel for the scope of what

1 is there -- 15, 20. Okay.

2 MR. HUTTON: But he is right. It's a very time-
3 consuming process, and I think again it is an area where
4 hopefully the parties could cooperate, and reach agreement
5 on what to ask the other stations, and which stations are to
6 be asked.

7 I would suggest that we try to come to an
8 agreement on those issues. I also think it is important
9 though to have an understanding at the outset of what the
10 relevant dates are. And I indicated that I was willing to
11 try to arrive at a stipulation.

12 But failing a stipulation, I think we will need a
13 ruling from you on that point.

14 JUDGE SIPPEL: Well, you see, I am coming into
15 this at obviously a much later stage, and I am thinking that
16 this should not be a problem. Coming up with a date,
17 relevant date, should not be that much of a problem.

18 I have seen arguments come in other cases like
19 this that I have handled. There have been arguments made as
20 to why there should be some overlapping, in terms of the
21 kind of issues, and some postrenewal expectancy time
22 evidence allowed in for a variety of reasons.

23 But I've never encountered a serious problem with
24 the renewal dates themselves.

25 MR. HUTTON: Well, Your Honor, in this case there

1 was a transfer of the control of the station during the
2 license period in question. In 1992, there was a
3 consummation of a Form 315 application, in which the station
4 came out of bankruptcy.

5 JUDGE SIPPEL: All right. There is one factor.
6 Again, this illustrates the difficulty of not having trial
7 counsel here this morning. I think I know how I am going to
8 handle this, but I want to hear from Mr. Shook. What would
9 be the Bureau's position, or would the Bureau have a
10 position?

11 MR. SHOOK: Your Honor, at this point, I am
12 willing to listen to what Mr. Bechtel has to say before
13 weighing in on the subject.

14 JUDGE SIPPEL: Do you want to say anything more?

15 MR. BECHTEL: I have a position on the point about
16 the dates of the renewal term.

17 JUDGE SIPPEL: Yes, sir.

18 MR. BECHTEL: I don't think that the transfer of
19 control should govern, because the principal party who
20 acquired control, in the group that acquired control,
21 throughout the entire period was present with the licensee,
22 and one must assume directed the affairs of the licensee.

23 So I don't think that is relevant. I think you
24 would go -- I mean, anything before the commencement of the
25 license term. I think a germane question would be the date

1 that the license was granted.

2 The previous license term ended on August 1 of
3 1989, and the five-year term would be from August 1, 1989,
4 to August 1, 1994. However, they did not grant the renewal
5 previously until February of 1992. And so a literal measure
6 of the license term is from February of '92 to August of
7 '94.

8 JUDGE SIPPEL: The February '92 date, is that as
9 of a result of the bankruptcy situation?

10 MR. BECHTEL: It was a result of the bankruptcy,
11 and the transfer of control, and for whatever other reason,
12 they just did not process them, and grant the application
13 for a period of the first couple of years.

14 If Mr. Hutton had argued that, I would have a
15 response to that, too, and that is I think that given the
16 stewardship of the company and its president, dating back to
17 the time that the previous license expired, that I would
18 argue that the full five-year term was relevant.

19 JUDGE SIPPEL: You are saying from '89 to '94?

20 MR. BECHTEL: That's correct. And this is
21 something that we can brief, if we can't stipulate. I am
22 ready to sit down and stipulate, but we can't stipulate. It
23 is a fairly narrow issue to brief and get a ruling.

24 JUDGE SIPPEL: Well, I agree on what you both
25 said, but it just seems to me that it is one of these

1 commonsense things that I would like to see the lawyers try
2 to work on a little bit before I make a ruling (phonetic).
3 I mean, if you are getting a turndown, please come to me
4 right away, and let me know.

5 Because what I am really interested in is you
6 getting started on that discovery that you are talking
7 about, and I don't want -- obviously if from October of '89
8 to '92 is going to be an irrelevant time, then there is no
9 point in these other 15 or 20 stations having to respond to
10 that period of time.

11 MR. BECHTEL: That's true.

12 MR. SHOOK: Your Honor, perhaps that is one of the
13 points, that if it can't be worked out prior to that time,
14 it would be argued and then ultimately ruled on in those
15 briefs that are going to be filed on the 22nd, and our
16 comments coming in on the 29th.

17 JUDGE SIPPEL: Well, that would make -- does that
18 sound good to you, Mr. Bechtel?

19 MR. BECHTEL: Sure.

20 JUDGE SIPPEL: Mr. Hutton?

21 MR. HUTTON: Yes.

22 JUDGE SIPPEL: All right. Then that will be the
23 next step. You all will try and negotiate on the renewal
24 expectancy period. If you can't, then that will be another
25 subject of that motion. I am not sure what you want to

1 caption that motion with. Maybe a motion on preliminary
2 matters, or something like that. I'm sure you will come up
3 with something better than that.

4 And it will have two points to it -- one, the
5 scope of the comparative issues, and secondly, the renewal
6 period. Okay. Does that -- so that satisfies the Bureau as
7 far as that question on the renewal period?

8 MR. SHOOK: Yes, sir.

9 MR. BECHTEL: And then --

10 JUDGE SIPPEL: And have you now gotten back in --
11 I'm sorry, Mr. Bechtel.

12 MR. BECHTEL: No, I was just going to conclude my
13 remarks about the scope of discovery.

14 JUDGE SIPPEL: Please do.

15 MR. BECHTEL: I think when you rule on this pre-
16 Bechtel II aspect, and the rest of the comparative issues, I
17 don't think that is going to be as burdensome a discovery as
18 the renewal expectancy.

19 The renewal expectancy can be cumbersome, and a
20 lot of documents, and it just physically is a bigger piece
21 of law work to work your way through. I think that the
22 timing is a lot better on this, on the balance of it,
23 because we obviously are going to get a ruling out of you in
24 early August.

25 And then we can go right to work on what is there,

1 which is not going to be, I don't think, a large piece of
2 documents in evidence, and so on and so forth. So I think
3 that part is quite manageable.

4 I think the discovery period for the renewal
5 expectancy -- and as a challenger, we err on the side of
6 moving things as fast as we can. It is the incumbent that
7 is maybe a little more relaxed about speed.

8 I am going to say that I think that it is a tight
9 squeeze to go to proofs on October 12th. It is not
10 impossible, but we would have to back up from that pretrial
11 brief, which I think is a very good idea, and putting cases
12 together after we had concluded discovery.

13 And my guess -- and this is purely a guess, but my
14 guess is that if we were to have the hearing in the first
15 part of November that that would be a little easier to
16 manage, just simply because of the volume of 3-years, or 5-
17 years, or whatever it is, of public service announcements,
18 and then talking to witnesses about all of this.

19 JUDGE SIPPEL: Well, up to a point, I would
20 certainly try to be as reasonable as I can in responding to
21 legitimate requests. I don't think that these dates that I
22 am setting at this point can be cast in stone in light of
23 the fact of what you are saying, because I do have to find
24 out what the scope of this discovery is going to be, and how
25 well the parties cooperate.

1 And I don't even have the other side's trial
2 lawyer to talk to about it. So, I don't -- this is -- I
3 will just have to take everything at face value of what you
4 are telling me.

5 If we have to push the date a little bit towards
6 November, we will look at that at a relative point.

7 MR. SHOOK: If I could comment on that.

8 JUDGE SIPPEL: Yes, please do.

9 MR. SHOOK: Yesterday, Mr. Bechtel and I talked
10 about the timetable, and he had thought that a hearing date
11 in the spring would be feasible. I told him that I thought
12 that was somewhat optimistic. I think you may be
13 underestimating the amount of work involved.

14 JUDGE SIPPEL: The spring of what year?

15 MR. SHOOK: 2000.

16 JUDGE SIPPEL: Really?

17 MR. SHOOK: Yes, sir.

18 JUDGE SIPPEL: Well, I get educated more every
19 day.

20 MR. BECHTEL: That discussion yesterday afternoon
21 is off the table. I have taken it off the table this
22 morning.

23 JUDGE SIPPEL: Well, at least it gives me an idea
24 that my schedule may be -- I may be a little bit optimistic,
25 in terms of what has to be done here. I went back to a

1 previous renewal, a comparative renewal case, that I had
2 handled.

3 And we ended up with a -- we went all the way
4 through the discovery phase before it ended up settling, and
5 I don't think that these dates that I set are too much off
6 the mark of that case. But they are all different.

7 All right. Well, I am going to set the dates down
8 today, because I still think it is only fair that counsel
9 have dates, and have a way of operating, in terms of what
10 they have to prepare for. And I am going to set a date down
11 in the middle of August for a status report of where we are.

12 And by that time, there had better be a litigator,
13 a full-fledged litigator, on behalf of Reading, and I will
14 know a lot more. Now, was there anything else that you
15 wanted to raise, Mr. Hutton, or that you wanted to point
16 out?

17 MR. HUTTON: I don't know if you want to talk
18 about witnesses, or --

19 JUDGE SIPPEL: I believe that is a little bit
20 early for that.

21 MR. HUTTON: Okay.

22 JUDGE SIPPEL: What do you think, Mr. Bechtel?

23 MR. BECHTEL: I don't have anything further, and I
24 think it is premature to get into witnesses.

25 JUDGE SIPPEL: Yes. The depositions. The way

1 that I anticipate this case being tried is that the
2 depositions, of course, of the principals can be taken. You
3 are invited to take the depositions of the principals.

4 But once you get to nonparties, I want to be, move
5 very carefully in that area for obvious reasons. And I want
6 to get a commitment as early as I can that both parties will
7 use sworn written statements, you know, with the right to
8 cross-examine, as opposed to bringing people in live, and
9 offer their depositions.

10 MR. BECHTEL: We are agreeable to that.

11 JUDGE SIPPEL: You are agreeable to that?

12 MR. HUTTON: As are we.

13 JUDGE SIPPEL: That should save a lot of time.

14 Maybe it will save some depositions, too, and lesser
15 witnesses can just -- you can just work off of their sworn
16 statements, and cross-examine them on that alone.

17 Well, I will have to see what your schedules are.
18 You are going to have to submit a status report to me so I
19 can find out exactly where you have gone, and where you are
20 going.

21 I want to get this motion resolved as quickly as
22 we can obviously, so that Mr. Bechtel can get moving on what
23 he was talking about. Is there anything else? Does anybody
24 else have -- I am the one that made -- I dealt the cards. I
25 gave you my order with the subjects. Is there anything more

1 that anyone else wants to talk about?

2 MR. BECHTEL: I have nothing.

3 MR. HUTTON: No, sir.

4 THE COURT: You have nothing, Mr. Shook?

5 MR. SHOOK: No, Your Honor.

6 JUDGE SIPPEL: Well, here are the dates that I
7 have. I know that we are going to have to change these
8 dates from what I heard this morning. But I am starting
9 discovery July 14th. Now, that's tomorrow, but -- yes, it
10 is starting tomorrow, and that means that you have the
11 opportunity to start tomorrow.

12 If you want to serve your first round of document
13 requests on the other party, that's fine, for whatever you
14 want. If you want to start noticing principals for
15 depositions, that's fine with me. If you want to request --
16 file request for admissions, that's okay.

17 The same way with these interrogatories. But you
18 want to start the first phase of it, and then you might have
19 to pick up pieces later after we get through with a ruling
20 on the motion with respect to the scope of the evidence, and
21 then you are going to have to go back a second time perhaps.
22 I leave that up to counsel.

23 MR. HUTTON: Your Honor, I would like to comment
24 on that.

25 JUDGE SIPPEL: Sure.

1 MR. HUTTON: If you are suggesting that the
2 parties could come in with repeated discovery efforts, I
3 would discourage that strongly.

4 JUDGE SIPPEL: I'm not -- no, and I don't
5 anticipate that it would happen that way. I think there are
6 certain fundamental documentary evidence that a T.V. station
7 has that Mr. Bechtel is going to need to get his case
8 started, and he can ask for that information now.

9 When we get into -- he obviously can't go into the
10 renewal period if we definitely don't know what that is.

11 MR. HUTTON: Right.

12 JUDGE SIPPEL: Now, if you have got something
13 specific that you want to impose on him, but what is wrong
14 with him asking. Maybe he wants to get things like your
15 articles of incorporation, and he may want to get something
16 with respect to the evidence on the bankruptcy, or who was
17 doing business at such and such a time.

18 MR. HUTTON: I am just trying to avoid a situation
19 of unnecessary, repetitive discovery efforts that are not
20 necessarily conducted in good faith. What I want to see
21 is -- I don't think it makes a lot of sense to conduct any
22 discovery until we have some understanding as to what the
23 scope of the issues are in the case, and what the relevant
24 renewal dates are.

25 And it seems to me that at that point the parties

1 could file their motions for documents, et cetera. It
2 doesn't seem to me to be very productive to file repetitive,
3 multiple motions for documents, and repetitive multiple
4 interrogatories.

5 JUDGE SIPPEL: Well, I don't think that Mr.
6 Bechtel is going to do that.

7 MR. BECHTEL: No. I obviously am not going to be
8 abusive, and I am not going to needlessly be repetitive.
9 What I would do if I were starting tomorrow is that I would
10 ask him for documents for the period from February of 1992
11 to August of 1994.

12 We know that is relevant, and then we get a ruling
13 that the earlier period is relevant, and then I will ask him
14 for those documents, too. In the meantime, I can be working
15 on a set of documents and getting things moving. And so I
16 took your remark as you made it, which was that people can
17 get started.

18 But surely they can't come back in with abusive or
19 repetitive, or burdensome, and unuseful supplemental
20 requests.

21 JUDGE SIPPEL: Mr. Shook, what does the Bureau
22 think about that?

23 MR. SHOOK: What Mr. Bechtel said sounds, you
24 know, perfectly reasonable. I don't see that anybody is
25 going to have a problem with at least the February of '92 to

1 August of '94 period as being relevant. The question will
2 be whether the earlier period may be.

3 So, I don't see that there would be a problem in
4 getting started and focusing on those dates.

5 JUDGE SIPPEL: I am convinced in favor of going
6 forward with the limitations. Commonsense limitations
7 really. And Mr. Hutton, you can suggest to your client that
8 maybe they want to assemble the documents in two ways --
9 just from '92 forward, and then pull out that same relevant
10 information with respect to the '89 period to '92, in the
11 event there is a subsequent request for it, so that your
12 client won't have to do double work.

13 Okay. Then on August 16th, both parties are to
14 file diversification statements, and that means that each
15 competing party has to review its application to ensure that
16 all the information that has been provided is accurate, and
17 then update that information as a pleading in this case.

18 And to include also any prospective future media
19 interests. That goes beyond the media interests for both
20 parties.

21 MR. HUTTON: Does that refer to pending
22 applications, or --

23 JUDGE SIPPEL: Yes. You know, it is a question of
24 weight when you get down to pending applications, but I
25 think that my experience with this issue that that is

1 relevant.

2 Also on August 16th -- well, it comes back to this
3 again, and you will have my ruling, believe me, before
4 August 6th, because I am going to be gone for a week after
5 that time, and so you will have my ruling by August 6th, if
6 not earlier.

7 So by August 16th, I am going to require Reading
8 to declare for the record that it is in fact seeking a
9 renewal expectancy, and that Reading will specify the
10 renewal period in that document, which of course is just a
11 question of adopting what my ruling says, or if you can work
12 it out independently of my ruling, fine.

13 But I am trying to give some certainly to this
14 process. Reading also is to state the legal standard and an
15 outline of the evidence that it expects to offer in support
16 of the renewal expectancy.

17 Now, this does not have to be as definitive, as
18 would a trial be, but -- and this is really as much for my
19 benefit, and maybe more for my benefit, than for Mr.
20 Bechtel's benefit, than for your benefit.

21 But I want to see exactly what in a general way
22 what the client has in mind. And provide an estimate of the
23 number of witnesses that Reading would expect to call on the
24 issue. Again, you would not be bound by that number, but I
25 would like to get by August 16th a feel of the scope of that

1 issue from Reading's side.

2 The next date would be August 23rd, which is a
3 Monday, and on that date, I would ask the parties or require
4 the parties to file a status report on discovery, and
5 particularly with respect to the production of documents and
6 the depositions of the principals.

7 Now, it may be that as things develop that you may
8 want to wait another five days or a week to do that, because
9 maybe the 30th would be a more logical time than would the
10 23rd. Unless you tell me otherwise, I am going to require
11 that, depending on that date.

12 And that would give me an opportunity to see how
13 it is progressing, and decide as to whether or not we will
14 have another prehearing conference. In all likelihood, we
15 probably will.

16 Now, I am going to give you these dates, and these
17 are the dates that I had in mind because I think that it is
18 important that -- for the purposes of process, that these
19 dates be set, and then you convince me as to why they can't
20 be met.

21 Discovery is starting on July 14th, and discovery
22 is to close on September 17th, cases to be exchanged -- that
23 means the documents, and sworn written testimony -- on
24 Monday, September 27th. Any subpoenas that are going to
25 require my signature by September 29th.

1 Trial briefs on September 30th, and witnesses
2 notified for cross-examination on October 4. Admission
3 sessions on the 7th and 8th of October, Thursday and
4 Friday -- Friday, if necessary. We probably should be able
5 to do this in one day, but I will set aside the 7th and the
6 8th. And then a hearing on October 12th.

7 Now based on what Mr. Bechtel -- if you all have
8 no objection, based on what Mr. Bechtel -- well, what Mr.
9 Bechtel, and particularly what Mr. Hutton has told me, I
10 would be inclined to -- and I can do this myself. I can
11 adjust these dates starting from something -- say late
12 October or early November, before you're going to get
13 anything back.

14 I am just not going to be able to touch base with
15 you all, in terms of each of these individual dates that I
16 am setting. But if there is a reason given for a change in
17 something by a day or two, I am amenable to doing that.

18 But I want to get this thing, this litigation,
19 structured, so that your predecessor or successor will know
20 what he has in store, or she has in store, for them.

21 MR. HUTTON: Could you repeat the September 29th
22 and September 30th things?

23 JUDGE SIPPEL: I certainly will. September 30th
24 is the trial briefs, and I will specify what are to be in
25 the trial briefs. In light of the fact that you organized

1 the documents and exchanged the documents, it shouldn't be
2 too difficult to put together a trial brief.

3 But I want to know which documents are going to
4 relate to what issue before we have the hearing, and I want
5 to see a little bit of -- well, you may have already covered
6 it, but in all honesty I expect that the trial brief will
7 cover a lot of what you have suggested to come in this
8 preliminary motion on comparative issues.

9 If the comparative issues get narrowed down, it is
10 going to be pretty easy, certainly for the parties to match
11 up the evidence to the issues, and also facilitate moving on
12 relevancy for discovery. And you want the other date of
13 September 29th?

14 MR. HUTTON: Yes, September 29th.

15 JUDGE SIPPEL: That would be any subpoenas. If
16 you need a subpoena for a nonparty witness, get it to me by
17 that day so that I can sign it, and we can get it out, and
18 give adequate notice to the party to show up in court. Does
19 anybody have any objections to my adjusting these dates on
20 my own?

21 I mean, I am giving you -- I'm sort of giving you
22 an out on it. If a distinct conflict comes on the date that
23 one needs to be moved a day or two, I will do that. But I
24 want to get this thing structured up in such a way that --

25 MR. BECHTEL: We have no objection.

1 MR. SHOOK: No objection.

2 MR. HUTTON: No objection.

3 JUDGE SIPPEL: Very well. I believe that is all
4 that I do have. I don't see any point in setting a date
5 down for another prehearing conference. I am available at
6 your call within reason. I have no objection to taking
7 telephone conference calls if it is about something that is
8 more mechanical.

9 If it gets to be too substantive, we will just
10 have to call a conference on the record. Again, I encourage
11 you all to cooperate as much as you can on this discovery.
12 I should have asked this question up front, too. Has there
13 been any discussion of settlement?

14 MR. COLE: Your Honor, let me raise the code of
15 silence as far as I am concerned. I am not aware of any
16 specific conversations. I know that there have been some
17 general conversations, and some approaches from principal to
18 principal, and from also third parties to, I believe,
19 principals of both parties.

20 I do not know what the status of those is, and I
21 do not know how developed those conversations became, but I
22 am aware that there have been some conversations, and those
23 extend back, I believe, over a period of a couple of months.
24 And I have not heard anything since.

25 JUDGE SIPPEL: The initiation of the hearing

1 hasn't precipitated any new action, or --

2 MR. COLE: Not that I am aware of. But again, I
3 am not entirely in the loop on that. I have tried to have
4 the principals contact one another.

5 JUDGE SIPPEL: Do you have anything more to weigh
6 in on that, Mr. Hutton?

7 MR. HUTTON: No, sir.

8 JUDGE SIPPEL: All right. Well, I'm sure that you
9 will let me know if something does develop. I asked that
10 question because I want to be as confident as I can today
11 that I am working on this case on the assumption that there
12 is going to be a hearing. So far that is the way I am
13 looking at it.

14 As I said, this is just to alert you, I will not
15 be in town August 7th through the 14th. But other than
16 that, I am available on fairly quick notice if anybody is
17 having a problem getting something that you think you are
18 entitled to. So that's it. We are in recess. Thank you.

19 MR. SHOOK: Thank you, Your Honor.

20 MR. BECHTEL: Thank you, Your Honor.

21 MR. HUTTON: Thank you, Your Honor.

22 (Whereupon, at 10:21 a.m., the hearing in the
23 above-entitled matter was adjourned.)

24 //

25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: MM No. 99-153


CASE TITLE: In Re: Reading Broadcasting

HEARING DATE: July 13, 1999

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: _7-13-99_




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